

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

WSOU INVESTMENTS, LLC d/b/a
BRAZOS LICENSING AND
DEVELOPMENT,

Plaintiff,

v.

DELL TECHNOLOGIES INC., DELL
INC., AND EMC CORPORATION,

Defendants.

Case No. 6:20-cv-00474-ADA

Case No. 6:20-cv-00475-ADA

Case No. 6:20-cv-00476-ADA

Case No. 6:20-cv-00479-ADA

JURY TRIAL DEMANDED

**DECLARATION OF BRIAN A. ROSENTHAL IN SUPPORT OF
DEFENDANTS' RESPONSIVE CLAIM CONSTRUCTION BRIEF REGARDING
PATENT NOS. 7,212,536, 7,453,888, 7,565,435 & 8,402,129**

I, Brian A. Rosenthal, declare as follows:

1. I am an attorney permitted to practice law before this Court *pro hac vice* and am licensed to practice law in New York and the District of Columbia. I am a partner with the law firm of Gibson, Dunn & Crutcher LLP and counsel of record for Defendants Dell Technologies Inc., Dell Inc., and EMC Corporation (collectively, “Defendants”) in the above-captioned action. I have personal knowledge and/or am directly informed of the matters stated below and, if called, would testify to them under oath.

2. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts of the reference titled, “Internetworking: A Guide to Network Communications, by Mark A. Miller (1997) (excerpts) (“Miller”).”

3. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts of the reference titled, “Concise Telecom Networking Dictionary, McGraw-Hill (2000).”

4. Attached hereto as **Exhibit 3** is a true and correct copy of excerpts of the reference titled, “TCP/IP and Related Protocols,” by Uyless Black (1992) (“Black”).

5. Attached hereto as **Exhibit 4** is a true and correct copy of excerpts of WSOU Investments, LLC d/b/a Brazos Licensing and Development (“Plaintiff”) Infringement Contentions for U.S. Patent No. 7,212,536, dated October 14, 2020.

6. Attached hereto as **Exhibit 5** is a true and correct copy of excerpts of the reference titled, “Computer Networks,” by Andrew S. Tanenbaum (1996) (“Tanenbaum”).

7. Attached hereto as **Exhibit 6** is a true and correct copy of Plaintiff’s Preliminary Constructions, dated January 20, 2021.

8. Attached hereto as **Exhibit 7** is a true and correct copy of excerpts from the ’888 patent File History, Oct. 19, 2007 Applicant Argument. This was retrieved from the United States

Patent Office's website (<https://portal.uspto.gov/pair/PublicPair>).

9. Attached hereto as **Exhibit 8** is a true and correct copy of excerpts from the '888 patent File History, June 9, 2008 Applicant Argument. This was retrieved from the United States Patent Office's website (<https://portal.uspto.gov/pair/PublicPair>).

10. Attached hereto as **Exhibit 9** is a true and correct copy of annotated excerpts of the reference titled, "RS Switch Router User Guide Release 7.0" ("Riverstone").

11. Attached hereto as **Exhibit 10** is a true and correct copy of excerpts from the '888 patent File History, April 8, 2008 Applicant Argument. This was retrieved from the United States Patent Office's website (<https://portal.uspto.gov/pair/PublicPair>).

12. Attached hereto as **Exhibit 11** is a true and correct copy of excerpts of the '888 patent File History, January 8, 2008 Final Rejection. This was retrieved from the United States Patent Office's website (<https://portal.uspto.gov/pair/PublicPair>).

13. Attached hereto as **Exhibit 12** a true and correct copy of the reference U.S. Patent No. 6,678,241 ("Gai").

14. Attached hereto as **Exhibit 13** is a true and correct copy of MPEP § 2181.

15. Attached hereto as **Exhibit 14** is a true and correct copy of Joint Chart and Plaintiff's Claim Construction Summaries.

16. Attached hereto as **Exhibit 15** is a true and correct copy of an excerpt of Plaintiff's Infringement Contentions for U.S. Patent No. 8,402,129, dated October 14, 2020.

17. Attached hereto as **Exhibit 16** is a true and correct copy of excerpts from the '129 patent File History, May 2, 2007 Applicant Response. This was retrieved from the United States Patent Office's website (<https://portal.uspto.gov/pair/PublicPair>).

18. Attached hereto as **Exhibit 17** is a true and correct copy of excerpts from the '129

patent File History, Sept. 17, 2007 Applicant Response. This was retrieved from the United States Patent Office's website (<https://portal.uspto.gov/pair/PublicPair>).

19. Attached hereto as **Exhibit 18** is a true and correct copy of a January 27, 2021 email sent by Kyanna Sabanoglu, counsel for Defendants, to Ryan Loveless, counsel for Plaintiff, regarding agreement for the “initiating a poll . . .” disputed term for the ’129 patent.

20. Attached hereto as **Exhibit 19** is a true and correct copy of a February 26, 2021 email I sent to Plaintiff's counsel regarding a proposed agreement regarding the “initiating a poll . . .” disputed term for the ’129 patent and asking for Plaintiff's response by March 3, 2021. On February 26, 2021, I sent an email to WSOU on behalf of Defendants regarding the “initiating a poll . . .” disputed claim term for U.S. Patent No. 8,402,129. In light of WSOU's opening claim construction briefing, the email proposed an agreement between the parties that “management station” mean “a management station that is capable of initiating a poll in response to both reporting from the node and a time interval being exceeded.” I asked for a response by March 3. WSOU did not respond to my email.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 17, 2021

/s/ Brian A. Rosenthal
Brian A. Rosenthal